

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

1) JANE DOE NO. 1, and

2) JANE DOE NO. 2

Plaintiffs,

V.

**1) POTEAU PUBLIC SCHOOLS,
PUBLIC SCHOOL DISTRICT
OF THE CITY OF POTEAU,
LEFLORE COUNTY, OKLAHOMA,**

**2) DON SJOBERG, Superintendent,
in his official and individual capacities,**

**3) MARSHALL BRENCE, Principal,
in his official and individual capacities,**

**4) JENNIFER LAMB, Assistant Principal,
in her official and individual capacities,**

**5) BRENDA DALTON, Title IX Coordinator,
in her official and individual capacities,**

**6) ANDREA TRAYWICK, Counselor,
in her official and individual capacities,**

7) **KY BUTLER, Teacher, in her official and individual capacities, and**

**8) EDGAR ANDREW PERDUE or
“ANDY” PERDUE, Teacher,
in his official and individual capacities,**

Defendants.

21-CV-338-SPS

NOTICE OF REMOVAL

To the United States District Court for the Eastern District of Oklahoma:

The Defendants, Independent School District No. 29 of Leflore County, Oklahoma commonly known as Poteau Public Schools (the “School District”), Don Sjoberg, Superintendent in his official and individual capacities (“Sjoberg”), Marshall Brence, Principal, in his official and individual capacities (“Brence”), Jennifer Lamb, Assistant Principal, in her official and individual capacities (“Lamb”), Brenda Dalton, Title IX Coordinator, in her official and individual capacities (“Dalton”), Andrea Traywick, Counselor, in her official and individual capacities (“Traywick”),

and Ky Butler, Teacher, in her official and individual capacities (“Butler”) (collectively referred to as the “School District Defendants”), pursuant to 28 U.S.C. § 1441 and § 1446, FED. R. CIV. P. 81, and LCvR 81.1 and 81.2, remove an action pending in the District Court for Leflore County, Oklahoma, to this Court, and accordingly state:

1. An action has been brought by Plaintiffs, Jane Doe No. 1 and Jane Doe No. 2 (the “Plaintiffs”),¹ against the School District Defendants and Defendant Edgar Andrew Perdue or “Andy” Perdue, Teacher, in his official and individual capacities (“Defendant Perdue”), in the District Court of Leflore County, Oklahoma, styled as *Jane Doe No. 1 and Jane Doe No. 2 v. Poteau Public Schools, Public School District of the City of Poteau, Leflore County, Oklahoma, et al.*, Case No. CJ-2021-125 (the “State Court Action”).

2. Pursuant to 28 U.S.C. § 116(b), Leflore County is within the federal judicial district served by the United States District Court for the Eastern District of Oklahoma.

3. Per an agreement between counsel for the School District Defendants and counsel for the Plaintiffs, the School District Defendants were served with copies of the Plaintiffs’ Petition initiating the State Court Action via email on October 22, 2021. The Petition purports to assert claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), under 42 U.S.C. § 1983, under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (the “ADA”), Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.* (“Section 504”), and violations of FERPA and HIPAA.

¹ The Plaintiffs are proceeding in this matter under the aliases of “Jane Doe No. 1” and “Jane Doe No. 2.” The Plaintiffs, however, did not make any motion or application with the District Court in Leflore County pursuant to OKLA. STAT. tit. 12, § 3226(C).

4. This Notice of Removal is being filed on November 12, 2021, which is twenty-one (21) days after service of the Petition in the State Court Action on the School District Defendants. This Notice of Removal is, therefore, timely. 28 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1331, the United States District Court for the Eastern District of Oklahoma has original jurisdiction over Plaintiffs' Title IX, 42 U.S.C. § 1983, ADA, and Section 504 claims. Specifically, the Plaintiffs allege that the School District violated Title IX because it failed to promptly and appropriately respond to the alleged sexual harassment of Plaintiff Jane Doe No. 1 ("Jane Doe No. 1") by Defendant Perdue, which resulted in Jane Doe No. 1 being excluded from participation in, being denied the benefits of, and being subjected to discrimination in the School District's education program in violation of Title IX. The Plaintiffs further allege that the School District failed to report the alleged sexual assault and harassment to law enforcement and failed to complete a Title IX complaint form, and discouraged the Plaintiffs from making any reports. As to their 42 U.S.C. § 1983 claims, the Plaintiffs allege that the School District Defendants violated Jane Doe No. 1's rights to equal protection. The Plaintiffs allege that the School District had a custom, policy, or practice of disparate treatment of females. Finally, the Plaintiffs allege that Jane Doe No. 1 suffered from a disability and the School District Defendants failed to make reasonable accommodations to ensure that employees with a history of sexual harassment were not left alone to further harm Jane Doe No. 1. On their face, these allegations purport to state federal law claims against the School District Defendants.

6. Pursuant to 28 U.S.C. § 1441, removal of the State Court Action to the United States District Court for the Eastern District of Oklahoma is proper.

7. All documents filed or served from the State Court Action, along with a copy of the state court docket sheet, are attached to this Notice of Removal and made a part hereof. 28 U.S.C.

§ 1446(a); LCvR 81.2. The Plaintiffs' Petition is attached as Exhibit 1. An Affidavit of Service filed by Plaintiffs reflects service of the Petition upon the School District Defendants is attached as Exhibit 2. The Summonses issued and served upon the School District Defendants are attached hereto as Exhibits 3, 4, 5, 6, 7, 8, and 9, respectively. A copy of the Leflore County docket sheet is attached as Exhibit 10.

8. Defendant Perdue has not yet been served, but consents to this removal.

9. Pursuant to Oklahoma statute, OKLA. STAT. tit. 12, § 2012, the Defendants' deadline to answer or otherwise plead in the District Court for LeFlore County, Oklahoma is November 12, 2021.² Because this Notice of Removal has been filed on November 12, 2021, in accordance with FED. R. CIV. P. 81(c)(2), the Defendants have until November 19, 2021 to file their answer or otherwise plead in this Court.

Respectfully submitted,

ROSENSTEIN, FIST & RINGOLD

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² November 11, 2021 was Veteran's Day, a federal and official State of Oklahoma holiday and the Leflore County courthouse was closed.

CERTIFICATE OF DELIVERY

☒ I hereby certify that on November 12, 2021, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants, to:

Alan M. Taylor, Esq.
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Attorney for Plaintiffs

☐ I hereby certify that on November ____, 2021, I served the attached document by United States Certified Mail, Return Receipt Requested on the following, who are not registered participants of the ECF System:

s/ Brian J. Kuester

BRIAN J. KUESTER